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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/660,077

09/10/2003

Anthony J. Baerlocher

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BELL, BOYD & LLOYD LLP
P.O. Box 1135
CHICAGO, IL 60690

EXAMINER

KIM, ANDREW

ART UNIT

PAPER NUMBER

3714

NOTIFICATION DATE

DELIVERY MODE

11/07/2008

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PATENTS@BELLBOYD.COM

Office Action Summary	Application No. 10/660,077	Applicant(s) BAERLOCHER ET AL.	
	Examiner ANDREW KIM	Art Unit 3714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 8/15/08.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

The examiner acknowledges the amendments made to claims 1,16 and 21.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-5,11-14,16 and 21-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Piechowiak et al. (US 6,168,523 B1) in view of Brune et al. (US 5,851,148).

Regarding claim 1,10,16,21,24 Piechowiak discloses a gaming device comprising a base game operable upon a wager by a player, wherein the wager includes a variable first component (e.g. a wager amount) and a variable different

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second component (e.g. number of paylines, col. 9, lines 16-27), a bonus game triggered if the player selects at least a threshold amount for the first component of the wager in the base game and achieves a designated outcome in the base game (a player must first place a wager in order to initiate play and may trigger a bonus game upon achieving a feature enabling criteria, col. 3, lines 55-67), a meter displayed in the bonus game which is changeable after the bonus game is triggered (Bonus hit counter, Fig. 6; col. 9, lines 32-40), wherein upon triggering the bonus game, said meter is at an initial predetermined level (i.e. no portions of the bonus hit counter are lighted), and when said meter reaches a designated level, an award generation event associated with the meter is provided to the player (claim 1).

Additionally, Piechowiak discloses said change may be of an amount which is independent of any outcome achieved in the base game (col. 7, lines 31-33), wherein "In one embodiment, each bonus hit, irrespective of its value, increments the individual hit counter in that machine by a fixed value X (step 420)" (emphasis added). That is, a bonus hit outcome during the bonus game increments the bonus meter and the amount that the bonus meter is incremented by is a fixed value X that is independent of any outcome achieved in the base game.

Piechowiak does not specifically disclose that each time a change of the meter occurs during the bonus game, said change is of an amount which is based on the second component of the wager in the base game. Instead, the primary embodiment of Piechowiak teaches that obtaining a designated symbol or symbol combination results in a change in the meter that occurs during the bonus game (col. 9, lines 34-36).

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However, Piechowiak also states that “the feature award criteria ... may embody various conditions in addition to those previously discussed” (col. 4, lines 57-59), wherein the feature award criteria is the bonus award criteria. In an analogous slot machine gaming device, Brune teaches the use of a wagering component (e.g. the amount wagered) to affect the amount of change of a bonus meter (col. 2, line 65 – col. 3, line 8). Specifically, Brune discloses a bonus meter **314** that is incremented by an amount that is a function of the amount of a wager placed by a player (Fig. 2, step **214**), irrespective of any outcome achieved in a base game. It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the bonus game and bonus meter of Piechowiak with Brune’s disclosed method of incrementing a bonus meter based on a second wagering component as Piechowiak states that any criteria may be used in determining when to award a bonus (col. 4, lines 57-59).

Regarding claims 2,17 and 22, Brune discloses the bonus game spin meter is affected linearly proportionally based on the second component of the wager (col. 3, lines 1-3).

Regarding claim 3, Piechowiak discloses the base game is a slot game (Fig. 6).

Regarding claims 4,18 and 23 Piechowiak discloses the meter may be common to all players of linked slot machine games. The meter tracks the number of occurrences of bonus game hits obtained by the collective of multiple players such that if one player were to cash out of a slot machine, it would not affect the meter (col. 6, lines 25-35). Piechowiak discloses resetting the meter only upon reaching the final

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bonus award criteria (i.e. obtaining a given number of bonus game hits) in col. 6, lines 65-67.

Regarding claim 5, Piechowiak discloses the first wager component necessary to trigger a bonus game is a number of paylines wagered on in that the player must inherently wager on at least one payline in order to initiate game play. Brune discloses the second wager component, used to determine the amount by which to change the bonus meter, is a wager amount (col. 3, lines 1-3).

Regarding claim 11, Piechowiak discloses the award generation event includes a number of free reel spins, a number of free games, a free reel spin with one or more wild symbols, a credit transfer, a credit multiplication, a video display, a mechanical display or any combination thereof (col. 5, lines 15-17).

Regarding claims 12 and 13, Piechowiak discloses the gaming device may be controller through a data network including an internet or computer storage device (col. 3, lines 6-30).

Regarding claim 14, Piechowiak discloses a determination of whether the designated outcome in the base game occurs is made prior to the player's play of the base game (col. 4, lines 57-64). Specifically, Piechowiak discloses the bonus game may be enabled upon a lapse of a certain amount of time such that the controller knows to initiate the bonus game (by providing a bonus enabling outcome) prior to the player's play of the base game.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Piechowiak et al. (US 6,168,523 B1) and Brune et al. (US 5,851,148) as applied above, and further in view of Mayeroff (US 6,186,894 B1).

Regarding claim 6, Piechowiak discloses a player chooses the amount of a wager and the number of paylines they wish to wager on. Additionally, Piechowiak discloses that any criteria may be used in determining when to award a bonus (col. 4, lines 57-59). Brune discloses the wagering component that determines the increment amount of the bonus meter is the amount of a wager placed by a player. In an analogous slot machine gaming device, Mayeroff teaches of a bonus game wherein various wagering components are utilized in order to determine the number of spins awarded in a bonus game, including number of paylines wagered on (abstract). It would have been obvious to one of ordinary skill in the art at the time of the invention to change the bonus meter by an amount based on a component of a wager such as number of paylines wagered on as Mayeroff teaches that this wager component may be used to determine an element of a bonus game. That is, a spin counter, i.e. a "bonus meter", may be changed by an amount which is based on a wager component such as the number of paylines wagered on. Thus, all of the claimed elements were known and one of ordinary skill in the art could have combined the elements using known methods in order to yield predictable results.

Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Piechowiak et al. (US 6,168,523 B1) and Brune et al. (US 5,851,148) as applied above, and further in view of Moody (US 5,823,873).

Piechowiak discloses a player chooses the amount of a wager and the number of paylines they wish to wager on. Additionally, Piechowiak discloses that any criteria may be used in determining when to award a bonus (col. 4, lines 57-59). Brune discloses the wagering component that determines the increment amount of the bonus meter is the amount of a wager placed by a player. In an analogous slot machine gaming device, Moody discloses a video poker game wherein the player is dealt multiple hands of cards and the player makes multiple wagers on said hands of cards such that the wagering components consist of the number of hands played and the wager per hand as claimed. The award is based on these wagering components. Therefore, all the claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods and the combination would have yielded predictable results to one of ordinary skill in the art at the time of the invention.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Piechowiak et al. (US 6,168,523 B1) and Brune et al. (US 5,851,148) as applied above, and further in view of Schneider et al. (US 6,089,976).

Regarding claim 9, *Piechowiak/Brune does not specifically disclose the threshold amount for the first component is the maximum amount for the first component.*

However, Piechowiak discloses that the bonus game trigger may consist of any of a

variety of conditions (col. 3, lines 59-60; col. 4, lines 57-59). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to utilize the maximum wager amount as the bonus triggering event condition, as taught by Schneider et al. (US 6,089,976). Schneider discloses a primary game wherein the player is able to qualify for bonus game play if they wager a maximum amount of credits and obtain a winning outcome (Fig. 7). This is a well-known bonus trigger requirement. Thus, all the claimed elements were known in the prior art at the time of the invention and one skilled in the art could have combined the elements as claimed by known methods and the combination would have yielded predictable results.

Claims 15, 20 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Piechowiak et al. (US 6,167,523 B1) and Brune et al. (US 5,851,148) as applied above, and further in view of Giobbi et al. (US 6,155,925).

Piechowiak/Brune does not specifically disclose a second bonus game played if the player does not select at least the threshold amount for the first component of the wager in the base game and achieves the designated outcome in the base game.

However, Giobbi discloses multiple bonus games played in accordance with various wagering thresholds. Specifically, a processor **26** controls the primary game and enables a plurality of different wagers to be made on the primary game and bonus games. The processor selects a pay schedule having different game outcomes corresponding to a predetermined wager amount such as 1-5,6-10,11-15, etc. credits each having a payout percentage per credit that successively increases as a wager

increases. Thus, the pay schedules each correspond to a range of credits wagered shown in Fig. 6a-6e represent a plurality of bonus games. Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Piechowiak and Brune to include multiple bonus games for varying wagering amounts, as disclosed by Giobbi, as Giobbi is an analogous gaming device invention in the same field of endeavor.

Response to Arguments

Applicant's arguments filed 8/15/08 have been fully considered but they are not persuasive.

Specifically, applicant's argument that Piechowiak in view of Brune does not teach each time a change of the meter occurs during the bonus game, the change is of an amount which is based on the selected different second component of the wager in the base game is not persuasive. As shown in the table, it clearly shows that the second different component is a major part of the equation on which meter changes because the amount of change is based on the total wager and the total wager is based on the wager amount per line.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does

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not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANDREW KIM whose telephone number is (571)272-1691. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dmitry Suhol can be reached on 571-272-4430. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Dmitry Suhol/
Supervisory Patent Examiner, Art
Unit 3714

11/5/2008 /A. K./

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